



GRATA
INTERNATIONAL

The nature and characteristics of a license agreement in Azerbaijan

2021

Prepared by:

Shabnam Sadigova Huseynova (Senior Associate)
Royal Ibrahimli (Associate)
GRATA International, Azerbaijan

Legal Acts

- Civil Code of the Republic of Azerbaijan dated 28 December 1999 under No. 779-IQ (hereinafter **"The Civil Code"**)
- Tax Code of the Republic of Azerbaijan dated 11 July 2000 under 905-IQ (hereinafter **"The Tax Code"**)
- The Law of the Republic of Azerbaijan on trademarks and geographical indications dated 12 June 12, 1998 Under No. 504-IQ (**hereinafter "the Law on Trademarks"**)
- The Law of the Republic of Azerbaijan on Patents dated 10 June 1997 under No. 312-IQ (hereinafter **"the Law on Patents"**)
- Decree of the Cabinet Ministers of the Republic of Azerbaijan on "Approval of the procedure on the registration of the agreements on trademarks" dated 15 September 2009 under No. 139 (hereinafter "the Procedure on the registration of the agreements on trademarks")

Definition of the License Agreement

Definition of the License Agreement is stipulated:

- in Art. 28 of the Law on Trademarks and in Art. 1.8 of the Procedure on the registration of the agreements on trademarks;
- in Art. 19.1 of the Law on Patents.

Under a trademark license agreement owner of the trademark (a licensor) grants the other party (a licensee) a permission to use a trademark in relation to the goods and services specified in the agreement.

According to a patent license agreement, patent owner (licensor) grants the right to exploit an invention, utility model and industrial design to another legal entity or individual (licensee) in a scope stipulated by agreement.

Exclusivity of the License Agreement

License agreements can be divided into the following types:

- **Exclusive License Agreement:**

Under an Exclusive License Agreement, a license can be granted only to one licensee (Art 1.8. of the Procedure of registering the trademarks agreements).

An Exclusive License means that no person or company other than the named licensee can use the relevant IP.

Importantly, the licensor is also excluded from exploiting the intellectual property rights.

- **Non-exclusive License Agreement:**

The licensor can license the IPRs out to more than one licensee in a non-exclusive license.

- **Sole License Agreement:**

In a sole license, the licensor agrees to use just one licensee, but the licensor reserves the right to continue to use their IP, as well.



Essential conditions of the License Agreement

- subject matter (a trademark, industrial design, invention, utility model, etc.), with indication of the registration number as it appears in the certificate;
- territory allowed for the intellectual property use;
- ways of the intellectual property use;
- contractual amount (price);
- parties' obligations;
- duration;
- quality assurance.



Registration Process

The application for the registration of the license agreement is submitted in Azerbaijani language.

The supporting documents can be submitted in Azerbaijani and other foreign language. Upon submitting of the documents in foreign language, the translated documents in Azerbaijani have to be submitted within one month period.

The list of the required documents is:

- Application form
- License Agreement
- Copy of the Trademark Certificate, patent and etc.
- Corporate documents of the applicant (TIN, Extract from the Registry, Charter) (upon submitting of the documents on behalf of the the legal entity)
- ID card and TIN of the individual (upon submitting of the documents by the individual)
- PoA

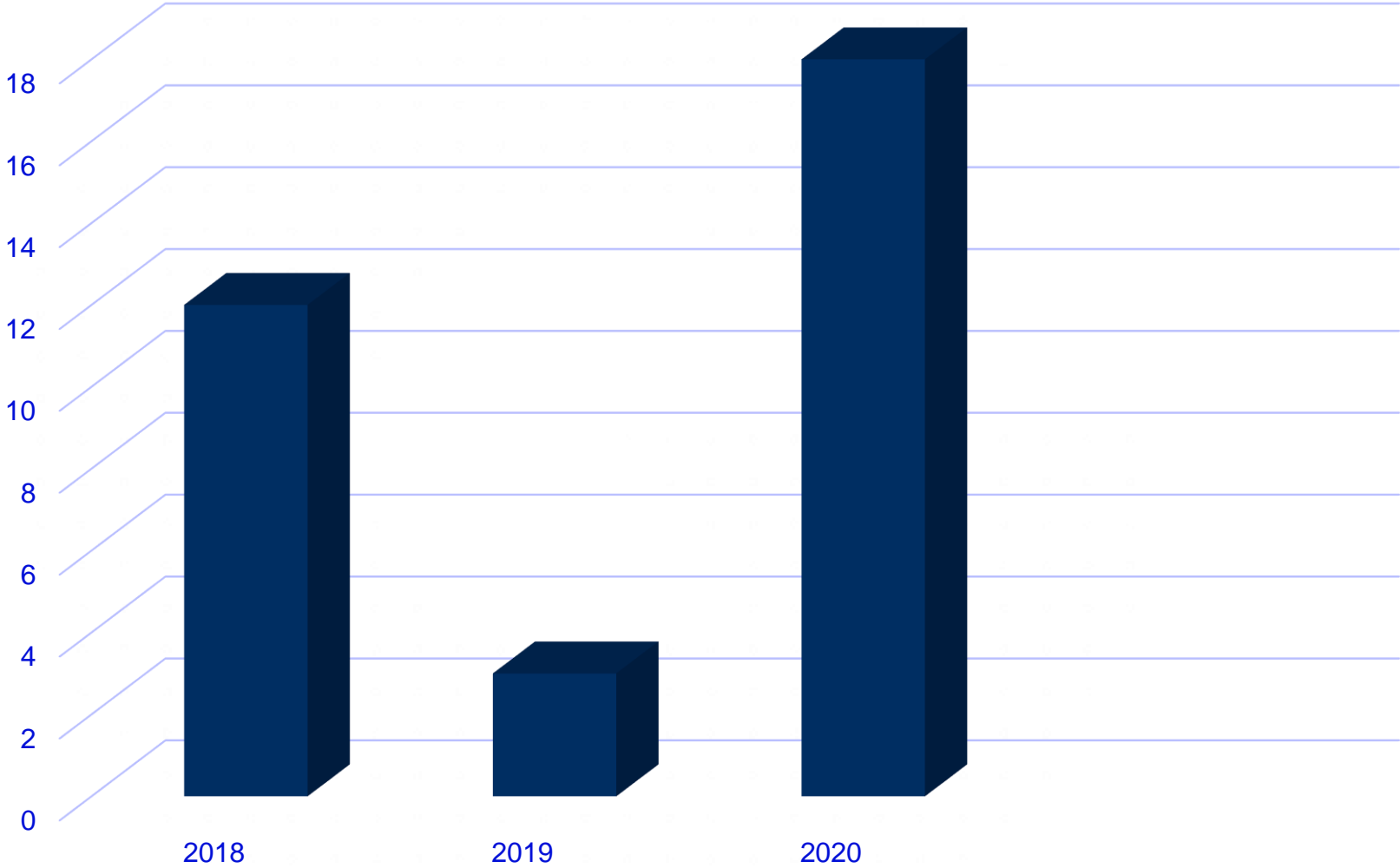
The documents are reviewed within one month period.

The information on the License Agreement is registered in the State Registry.

Information on the registration of the License Agreement in the State Registry is published on the official bulletins of the Trademark Agency.

Registered Trademark License Agreements (local)

Period covering
2018-2020



Patent Indicators/ Registered Patent License Agreements (local)

Periods	2010	2011	2012	2013	2014	2015	2016	2017
Issued patents	126	118	111	78	97	88	131	67
Active patents	496	451	289	248	288	203	345	236
<u>License Agreements</u>	1	-	4	-	1	-	-	2

License fee under Tax Code

License fee for the right to use IP right objects falls within the definition of the royalty provided for in the Azerbaijani Tax Code.

Under the Tax Code, “royalty” means any kind of payments received as consideration for the use of, or the right to use, (i) copyrights on works of literature, art or science; software and cinematograph films and other intangible assets; (ii) any patent, trademark, design or model, plan, secret formula or process, or information concerning industrial, commercial or scientific experience; (iii) industrial, commercial or scientific equipment (Art. 13.2.23).

Thus, license fees paid by a Licensee to a Licensor under a License Agreement will qualify as royalty payments for taxation purposes.

Taxation of non-residents under a License Agreement

When Licensor is a non-resident entity, the following taxes apply to license fees:

Tax	Tax rate	Tax agent
WHT	14% (Arts. 124.1, 125.1.7, Tax Code)	Resident entity
VAT	18% (Arts. 168.1.5, 169, 173.1, Tax Code)	Resident entity

Avoidance of Double Taxation

Double Tax Treaties to which Azerbaijan is a party provide lower tax rates (e.g., 5%, 8%, 10%) for royalty payments.

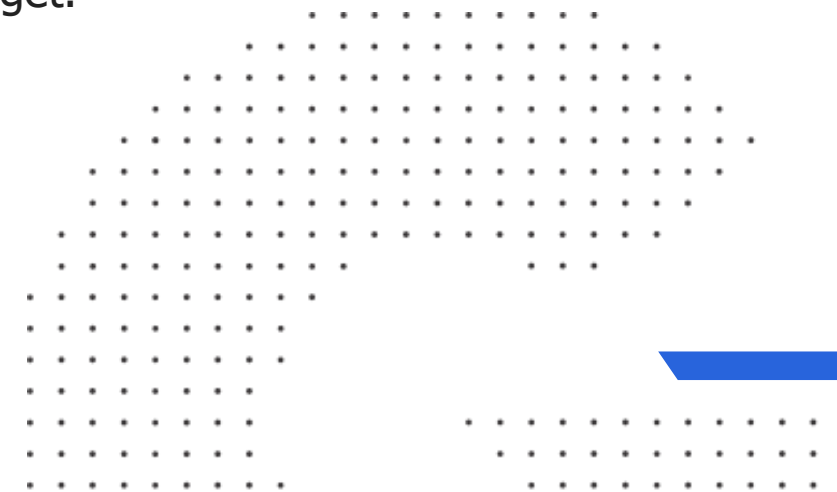
The lower tax rates do not automatically apply.

To benefit from a lower tax rate specified in DTTs, non-resident (or its authorized representative) should submit a specific application form (DTA-03) to tax authority.

DTA-03 Form shall be submitted before the payment is made by local Licensee.

If it is not submitted, and an approval is not received from the tax authority, the local Licensee is obliged to withhold tax at a higher rate specified in the Tax Code (i.e., 14%) and remit it to the state budget.

Country	Tax rate
Malta	8%
Netherlands	5/10%
Russia	10%
Kazakhstan	10%



THANK YOU!

Shabnam Sadigova
Huseynova

ssadigova@gratanet.com

Royal Ibrahimli

ribrahimov@gratanet.com

Tel: +994125974833